



#14

PATENTS

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**EMBIL ET AL.**

Serial No. 09/762,630

Filed: February 12, 2001

For: **NIMESULIDE CONTAINING  
TOPICAL PHARMACEUTICAL  
COMPOSITIONS**)  
)  
)  
) Art Unit: 1614  
)  
) Examiner: Dwayne Jones  
)  
)  
)**PETITION FOR REVIVAL OF AN APPLICATION UNINTENTIONALLY  
ABANDONED UNDER 37 C.F.R. § 1.137(b)**Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

Please revive the above-referenced application which went abandoned January 3, 2002. This petition is filed within one year of the date on which the application became abandoned.

Accompanying this petition are:

- (1) A reply required to the outstanding Office Action under 1.137(b);
- (2) A check for the petition fee of \$640.00 as set forth in 37 C.F.R. § 1.17(m);

- (3) A statement that the abandonment and delay were unintentional; and

11/20/2002 AWONDAF1 00000038 09762630

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231, on November 13, 2002.

Suzanne Seavello Shope

Suzanne Seavello Shope - Reg. No. 37,933

(4) Copies of Revocations of Power of Attorney for Nixon & Vanderhye P.C. and new Powers of Attorney for Kilpatrick Stockton LLP filed June 13, 2002 (Exhibit G).

**STATEMENT OF UNINTENTIONAL ABANDONMENT AND UNINTENTIONAL DELAY**

The above-referenced application was unintentionally abandoned. The entire delay, from the time of the abandonment to the filing of the present petition, was unintentional.

Evidence that the 09/762,630 application unintentionally went abandoned is provided by the following:

1. The original application was filed in Turkey on 12 August 1998. A PCT application claiming priority to the Turkish application was filed on 12 August 1999.
2. On February 12, 2001, a National Phase Application of PCT/IB99/01460 was filed by attorneys from Kilpatrick Stockton, LLP at the request of the inventors, Dr. Koral Embil and Mr. Ramon Figueroa.
3. At the time of filing, Kilpatrick Stockton, LLP submitted a Preliminary Amendment, the priority document, a Declaration and Power of Attorney and a check for \$459.00 (see Exhibit A).
4. Unbeknownst to Kilpatrick Stockton, LLP or the inventors, a second national phase application was filed by the law firm Nixon and Vanderhye P.C. Nixon and Vanderhye P.C. filed this second national phase application on the instruction of the foreign firm responsible for filing the PCT application.

5. The Nixon and Vanderhye, P.C. application was assigned application number 09/762,630. Nixon and Vanderhye, P.C. later filed a Declaration and Power of Attorney on April 10, 2001 (*See Exhibit B*).

6. Kilpatrick Stockton, LLP never received an application serial number.

7. On June 7, 2001, Kilpatrick Stockton, LLP, contacted the U.S. Patent and Trademark Office in order to obtain the application number and was given the number 09/762,630 which, unbeknownst to Kilpatrick Stockton, LLP had been assigned to the application filed by Nixon and Vanderhye, P.C.

8. On the belief that the application they had filed was being processed, Kilpatrick Stockton, LLP filed an Information Disclosure Statement (IDS) on June 13, 2001 (*See Exhibit C*). The Kilpatrick Stockton, LLP IDS was filed in the Nixon and Vanderhye, P.C. patent application file at the U.S. PTO.

9. The inventors discovered that two national phase applications had been filed. The inventors, under the belief that the application filed by Kilpatrick Stockton, LLP was proceeding, instructed the foreign associate and/or Nixon and Vanderhye P.C. to stop prosecuting the Nixon and Vanderhye P.C. application.

10. An Office Action was sent to Nixon and Vanderhye P.C. on July 3, 2001. Based on the instructions from the inventors, Nixon and Vanderhye, P.C. did not respond to the Office Action and thereby let application 09/762,630 go abandoned (*See Exhibit D, Interview Summary*).

11. The inventors requested a status inquiry of Kilpatrick Stockton, LLP on February 2, 2002. After some amount of time, numerous telephone inquiries to the United States Patent and Trademark Office, and the re-submission via facsimile of multiple copies of our filing documents and cancelled filing fee check to the United States Patent and Trademark Office, Kilpatrick Stockton, LLP discovered that two applications had been filed. It was further discovered that an Office Action had been sent to Nixon and Vanderhye P.C. and that the application (U.S.S.N. 09/762,630) had gone abandoned for failure to respond to the Office Action.

12. On March 26, 2002, more than 13 months after filing the application, the U.S. PTO mailed notification of the cancellation of U.S. Application No. 09/762,766 (*See Exhibit E*). This was the first formal notice that the application filed by Kilpatrick Stockton, LLP had even been assigned a serial number other than the serial number assigned to the Nixon & Vanderhye application.

13. On April 4, 2002, (14 months after filing) Kilpatrick Stockton, LLP received a stamped return postcard, with the Nixon and Vanderhye, P.C. serial number affixed on it (*See Exhibit F*).

14. Since Applicants were unaware that the application assigned serial no. 09/762,766 had been canceled, and would have otherwise responded to the Office Action sent to Nixon and Vanderhye, P.C., there was never any intention by them to abandon this application.

15. Promptly after discovering that the above-referenced application had gone abandoned, applicants decided that the best course of action would be to revive the Nixon and Vanderhye, P.C. application for prosecution. The undersigned attorney then prepared the present petition. The entire period of delay in not responding to the Office Action was unintentional.

16. On June 5, 2002 a Revocation of the Power of Attorney for Nixon & Vanderhye under 1.137(b) and a new Power of Attorney for Kilpatrick Stockton, LLP was filed with the United States Patent and Trademark Office (*See Exhibit G*).

In light of the above statement of unintentional abandonment, filing of this petition to revive within one year from the date of abandonment with appropriate petition fee, and the accompanying response to the last Office Action mailed in the application; *i.e.*, the continuing application and Preliminary Amendment, Applicants believe that the requirements of 37 C.F.R. § 1.137(b) have been satisfied. Applicants respectfully request, therefore, that the 09/762,630 application be revived.

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The Commissioner is hereby authorized to charge any additional fees required  
under 37 CFR §1.17, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,

*Suzanne Seavello Shope*

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Reg. No. 37,933

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